



PATENT
Attorney Docket No. 502119

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Michael Brinkman et al.

Art Unit: 3632

Application No. 10/743,215

Examiner: Steven M. Marsh

Filed: December 22, 2003

For: LABEL HOLDER FOR A SHELF PRICE
CHANNEL

**TRANSMITTAL OF
APPELLANTS' REPLY BRIEF**

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 41.37, appellants hereby submit Appellants' Reply Brief on Appeal.

The items checked below are appropriate:

1. Status of Appellants

This application is on behalf of ☐ other than a small entity or ☒ a small entity.

2. Oral Hearing

☐ Appellants request an oral hearing in accordance with 37 CFR 41.47.

A separate paper requesting oral hearing is attached.

3. Extension of Time

☐ Appellants petition for a one-month extension of time under 37 CFR 1.136, the fee for which is \$ 0.00.

☐ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: \$0.00

4. Total Fee Due

The total fee due is:

Brief on Appeal Fee	\$ 0.00
Request for Oral Hearing	\$ 0.00
Extension Fee (if any)	\$ 0.00

Total Fee Due: \$0.00

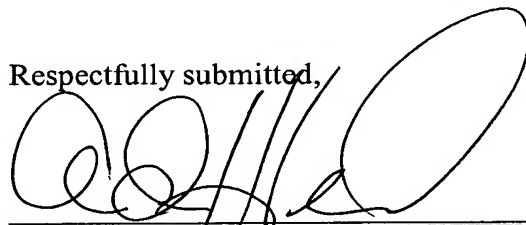
5. Fee Payment

☐ Charge Account No. 50-3505 the sum of \$. A duplicate of this transmittal is attached.

6. Fee Deficiency.

☒ If any additional fee is required in connection with this communication, charge Account No. 50-3505. A duplicate copy of this transmittal is attached.

Respectfully submitted,



Andrew J. Heinisch, Reg. No. 43666
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Date: March 21, 2006



CERTIFICATE OF MAILING

I hereby certify that this REPLY BRIEF TRANSMITTAL AND REPLY BRIEF (along with any documents referred to as attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date:

March 21, 2006

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REPLY BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Examiner's Answer Brief dated February 15, 2006 has been carefully considered. Generally, the Examiner's Answer Brief merely restates the same rejections raised in the Office Action dated April 29, 2005. As a result, all of the arguments raised in Appellant's main brief continue to be applicable and address the issues raised in the Examiner's Answer Brief. However, Appellant will briefly point out some of the legal and factual errors and deficiencies Appellant sees in the Examiner's Answer Brief at pages 5-7.

In the Examiner's Answer at page 5, the Examiner continues to maintain that he can basically rename and redefine structure in the prior art as he deems fit. Specifically, despite the fact that primary reference Fast et al. identifies "back or body panel" at reference character 16, the Examiner insists that cover member 18 of Fast et al. can qualify as the back panel. In essence, the Examiner is completely ignoring the express disclosure of Fast et al. and/or reading out the back and front limitations which are recited in the claims. Thus, interpretation is not only contrary to Applicant's disclosure, but also directly contrary to the explicit written description of the prior art relied upon by the Examiner (namely Fast et al., U.S. Patent No. 6,688,567 at col. 4, lns. 43-47). Additionally, it will be pointed out that the Examiner's interpretation is also directly contrary to the secondary reference, Nagle, which recites a column 3 "label holder display tip 10 of FIG. 1 includes a front panel 11, formed of

clear plastic material, and a first back panel 12, also formed of plastic material but not necessarily clear." Col. 3, lns. 48-51. It is thus very well understood in the relevant art as to what a front panel and a back panel mean to one of ordinary skill. It is not appropriate for the Examiner to, in essence, assert that a back panel can be a front panel and a front panel can be a back panel to make a superficial obviousness rejection (particularly when the rejection asserts that the front panel, which is alleged in the rejection to be the back panel, can also then be opaque which would prevent signs from being seen in the label pocket 17 of Fast et al.). As a result, and in view of this erroneous interpretation and effectively reading out meaningful limitations from the claims of Applicant's patent application, all of the rejections need to be withdrawn and overturned.

The Examiner's Answer also makes an error in explaining the function of the clips taught by Fast et al. In particular, the Examiner's Answer at page 5, ¶ 3 asserts that the function of the clips 50, 52 is to hold a sign as shown in FIG. 1. This is not true. The purpose of these clips 50, 52 are to hold a separate spring clip of a sign holder¹ which includes spring plastic or metal element having oppositely extending edge portions adapted to be snappingly engaged in the sign holder receiving pockets 54, 56. Fast et al., col. 5, lns. 20-33. Structure 19 of Nagle only holds a sign 27, not a separate sign holder, and does not provide two different receiving pockets 54, 56 for receiving a spring plastic or metal element having oppositely extending edge portions. Thus, the assertions are factually incorrect. Again, the obviousness rejection eliminates the sign holder receiving lip members 50, 52 of the Fast reference to duplicate structure which is already provided. Not only does this not provide any additional functional advantage (there is no prior art reference which shows a sign holder with three planar panels), but it also eliminates the substantial advantage of the primary reference by eliminating function of the sign holder receiving lip members 50, 52 and sign holder receiving pockets 54, 56 of Fast et al. This violates all of the established hallmarks of obviousness law as set forth in the MPEP 2143.01 in that "the proposed modification cannot render the prior art unsatisfactory for its intended purpose" and "cannot change the principal of operation of a reference." It is not seen to be possible with the Examiner's rationale to accommodate the spring plastic or metal sign holder element having oppositely engaging edge portions which are snapped into sign holder receiving pockets 54,

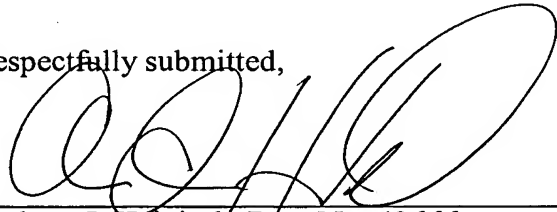
¹ A "sign holder" is different than a "sign."

In re Appln. of Michael Brinkman et al.
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56 when that structure is eliminated by the proposed modification. Accordingly, the Examiner's Answer, if anything, exemplifies why the obviousness rejections cannot stand.

Based on the foregoing, there can be no question but that rejections are being made in a superficial manner and improperly using hindsight in Appellant's disclosure as the rationale for making the asserted combination. Appellant therefore respectfully requests that the obviousness rejections be withdrawn.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Heinisch', is written over a horizontal line.

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